

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33177
Docket No. CL-33857
99-3-97-3-362**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11751) that:

(a) The Carrier violated the Clerks Rules Agreement effective July 21, 1972, as revised, particularly Rules 5, 8, 10 and other rules when on February 17, 1996, it refused to allow Claimant Gaunay to displace position of Clerk-Typist (Terminal Report Clerk) Relief, located at Terminal Services, Rensselaer, NY, hours (Various), rate of pay \$14.50 per hour held by junior employee, Rose Ignieri.

(b) Claimant Gaunay should now be allowed eight (8) hours punitive pay, based on the pro-rata rate of \$14.50 per hour commencing February 17, 1996, and continuing for each and every work day thereafter on account of this violation.

(c) In order to terminate this claim, Claimant must be permitted to displace said position.

(d) This claim has been presented in accordance with Rule 25 and should be allowed.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At the time this claim arose, Claimant was assigned as a Customer Service Statistical Clerk at Carrier's facility at the Albany/Rensselaer, New York, station. On February 17, 1996, she attempted to exercise her seniority over a junior employee on the position of Clerk/Typist. However, she was unable to meet the typing requirement for the position sought, 50 words per minute (wpm).

The Organization filed a claim on February 26, 1996, alleging that Carrier had violated the Agreement when it refused to let Claimant displace into the Clerk/Typist position. That claim was subsequently denied and progressed up to and including conference on the property.

The Organization maintains that the Carrier's standard of 50 wpm is overly rigid, and that, since Claimant was able to type 43.5 wpm, she should have been allowed to displace into the position at issue. It notes that she reached 87% of the qualifying speed when she typed 43.5 wpm. It also argues that she probably could have been up to speed given the contractually provided 30 days to qualify in the position.

The Carrier maintains that Claimant did not possess the minimum requirements for being placed into the position in the first place. It also noted that it has in the past allowed 10% leeway in the typing test, but Claimant did not even achieve that level of qualification.

Many Awards on this and other Boards have upheld Carrier's right to set minimum fitness and ability standards for employees bidding into or displacing into positions. The restriction on this right is that such requirements must not be excessive, unreasonable, or arbitrary. (Third Division Award 21802; Public Law Board No. 4208, Award 4).

Moreover, such requirements must be congruent with the Agreement provision that, once a minimally qualified employee is assigned to a position, s/he has (on this property) 30 days in which to become satisfactorily qualified in the specific position. In the instant case, Carrier determined that Claimant did not even possess the minimum qualifications to be allowed to displace into the job and then enjoy 30 days in which to become satisfactorily competent in the remaining requirements of the position. In the present case, the Organization has not made a persuasive argument that the requirement that Claimant be able to type at least 45 wpm (allowing for the 10% margin) is either excessive or unreasonable. See Third Division Award 29759; Fourth Division Award 4093; Public Law Board No. 4418, Award 5.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of March 1999.